

## **Exhibit A**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**  
ROMANO, et al., : 16-cv-05760-DRH-ARL  
Plaintiffs, :  
- versus - : U.S. Courthouse  
: Central Islip, New York  
:  
NORTHROP GRUMMAN CORPORATION, :  
et al., : February 4, 2019  
Defendants :  
-----X

TRANSCRIPT OF CIVIL CAUSE FOR DISCOVERY CONFERENCE  
BEFORE THE HONORABLE ARLENE R. LINDSAY  
UNITED STATES MAGISTRATE JUDGE

**A P P E A R A N C E S:**

**For the Plaintiff:**

**Lilia Factor, Esq.**  
Napli Shkolnik PLLC  
400 Broadhollow Road  
Suite 305  
Melville, NY 11747

**For Defendants**  
**Northrop Grumman:**

**Jessica Kaufman, Esq.**  
**Katie Louise Viggiani, Esq.**  
Morrison & Foerster  
250 West 55th Street  
New York, NY 10019

**For Defendant**  
**Town of Oyster Bay:**

**Peter F. Tamigi, Esq.**  
Milber Makris Plousadis &  
Seiden, LLP  
1000 Woodbury Rd, Suite 402  
Woodbury, NY 11797

**Transcription Service:**

**Transcriptions Plus II, Inc.**  
61 Beatrice Avenue  
West Islip, New York 11795  
laferrara44@gmail.com

Proceedings recorded by electronic sound-recording,  
transcript produced by transcription service

## Proceedings

1 has involved both the park and the Grumman facility.

2 THE COURT: You're missing my point. I am  
3 trying to define the terms. The terms are what site and  
4 what's offsite. I'm just trying to get everybody on the  
5 same page as to definitions since you say that's what  
6 part of the site is a public park. I don't want that as  
7 part of the definition. Offsite will include the area  
8 that's been designated a public park and everything off  
9 the Grumman property itself, okay? Let's stay on the  
10 same page with respect to definitions.

11 MS. FACTOR: Okay. Then we'll have to -- our  
12 understanding between the parties has been to include the  
13 park as part of the site in responding and in making  
14 discovery demands, so we can -- we would have to readjust  
15 that.

16 But I just want to clarify --

17 THE COURT: Is that -- I mean I said this makes  
18 more sense to me but if you folks want to have a  
19 different definition, I will go with your definition.

20 MS. KAUFMAN: So I think this is the issue,  
21 your Honor. The class definitions in this case are  
22 around property damage, property owners in Bethpage, not  
23 everyone who ever used the park. That's not even what  
24 their class is built around. Their class is of property  
25 owners in Bethpage. So --

Proceedings

1 THE COURT: So there people -- I know there are  
2 two classes.

3 MS. FACTOR: No, that's incorrect.

4 THE COURT: How is that separate --

5 MS. FACTOR: I'm sorry.

6 THE COURT: Please let me finish with one  
7 lawyer before you blurt out that's not correct. Just one  
8 at a time and that would make this go faster. So give me  
9 the -- I know there's the allegation with respect to  
10 property damage. There is also allegations with respect  
11 to personal injury. Those are the two categories that I  
12 saw in the complaint.

13 MS. KAUFMAN: So, your Honor, plaintiffs have  
14 represented and I am not sure if this is in the papers  
15 but very clearly throughout our negotiations on this that  
16 they are not seeking to certify a class of personal  
17 injury claimants. They are seeking to certify --

18 THE COURT: Is that correct?

19 MS. KAUFMAN: -- a class for property damage  
20 and medical monitoring from exposure on the property.

21 MS. FACTOR: We have a class action which  
22 includes previous -- current or previous owners of the  
23 residential property -- I am reading from the complaint  
24 -- located in Bethpage and/or individuals who used and  
25 visited the Bethpage community park.

## Proceedings

1 In other words, we have current residents,  
2 prior residents, property owners, property renters, and  
3 people who used and visited the park. So it's a --

4 THE COURT: Are you seeking a --

5 MS. FACTOR: These are --

6 THE COURT: Are you seeking certification of a  
7 class of both property damage and in addition, personal  
8 injury?

9 MS. FACTOR: Yes, your Honor. We are seeking  
10 -- and we're seeking for people who were exposed also and  
11 may not have a specific personal injury but were exposed  
12 and may develop certain conditions in the future because  
13 of their exposure.

14 And so, that we're also seeking medical --

15 THE COURT: Were they also --

16 MS. FACTOR: -- monitoring.

17 THE COURT: -- are they all property owners?

18 MS. FACTOR: No.

19 THE COURT: Adjacent property owners?

20 MS. FACTOR: No, some of them were --

21 THE COURT: So who would be the other people.

22 MS. FACTOR: -- did not own -- some of them  
23 were just residents and did own the property where they  
24 resided but they're all --

25 THE COURT: Okay, residents --

Proceedings

1 MS. FACTOR: -- within the area near the site  
2 in the vicinity of the toxic plumes.

3 THE COURT: Well, I am trying to be more  
4 specific. You can't just say everybody who is in the  
5 site. I am trying to identify who that is.

6 MS. FACTOR: Yes.

7 THE COURT: You're talking about property  
8 owners and/or residents. Residents by virtue of renting,  
9 is that it?

10 MS. FACTOR: Yes, they could have rented or  
11 they could have been family members of the property  
12 owners who just lived there because -- or grew up there.

13 THE COURT: But who lived there for some period  
14 of time. Right?

15 MS. FACTOR: That's correct.

16 THE COURT: Okay.

17 MS. FACTOR: So former and current residents  
18 within the area covered by the plume.

19 THE COURT: Okay. And the area covered by the  
20 plume includes the public park area but there are no  
21 houses in the public park, right?

22 MS. FACTOR: No, but --

23 MS. KAUFMAN: Yeah, it's a different issue.

24 MS. FACTOR: That's right but some of these  
25 people -- many of these people because by virtue of their

## Proceedings

1 being residents and living there, they used the park.  
2 The park had ballfields. People -- all the kids who went  
3 to school there used the ballfields. The park had  
4 recreation areas, an ice rink, park picnic benches. Many  
5 of our clients that we've interviewed used the park on a  
6 regular basis. So, yes, that is why we --

7 THE COURT: Okay, but they used it because they  
8 were residents, right?

9 MS. FACTOR: That's right.

10 THE COURT: Okay. And what is it that you say  
11 is not included?

12 MS. KAUFMAN: Well, first I do --

13 THE COURT: I am sort of lost here. I have no  
14 idea now who the class is.

15 MS. KAUFMAN: -- want to say that the position  
16 that plaintiffs' counsel is taking is directly 180  
17 degrees from documented conversations we had very early  
18 in this process stating that they were not seeking to  
19 certify a class of personal injury claimants but if that  
20 has changed, then we, I suppose now know that they are.

21 But the reason this is a class of residents is  
22 because plaintiffs are seeking to certify a class of  
23 people who were injured on their properties, that's what  
24 the class definitions say and I think the town may have  
25 something to say about this too and I will leave that to

## Proceedings

1 him but plaintiffs are alleging that is why they've  
2 brought a separate group of individual plaintiffs who are  
3 not part of any of this discussion yet, 14 more people in  
4 this case plus 59 in the or 60-some-odd in the Ackerman  
5 (ph.) filing, and then another case, Ackerson (ph.),  
6 which was filed just last month by the same counsel on  
7 behalf of other people who may not have been proper --  
8 many of them former residents who at one time residents  
9 in Bethpage but don't have a property claim.

10           So we don't -- the idea that sure, I mean I  
11 think our position is that Bethpage Community Park in the  
12 way that it's alleged in the complaint, could be  
13 considered onsite because it was once part of the NWIRP  
14 facility that we're talking about.

15           But for the purpose of class discovery, the  
16 fact that someone went to Bethpage Community Park at one  
17 time is totally irrelevant to the class claims that  
18 appear to be asserted on the face of the complaint and if  
19 there's some amendment that plaintiffs need to make in  
20 order to make that clear, then fine but it's not -- it  
21 doesn't appear to go to who is actually in the classes as  
22 they have defined them in their complaint.

23           THE COURT: All right. Let me --

24           MS. FACTOR: Well, may I just refer -- I can  
25 refer the defendants and the Court to our complaint which



## Proceedings

1 states who the class -- the proposed classes are; all  
2 residents of Bethpage who have been exposed, then all  
3 owners of real property Bethpage for damages for property  
4 value, all owners for remediation of property, all owners  
5 of property in Bethpage for future costs.

6 So it includes all residents of Bethpage, not  
7 necessarily property owners who have been exposed and --

8 MS. KAUFMAN: But all -- sorry.

9 MS. FACTOR: Let me just finish please.

10 MS. KAUFMAN: I'm sorry. I'm sorry, counsel.

11 MS. FACTOR: I'm trying to clarify defendants'  
12 confusion. We are absolutely seeking relief on behalf of  
13 not just property owners but residents of Bethpage,  
14 whether they're currently living there or past.

15 And the complaints that we have filed in  
16 addition or for additional people is because additional  
17 people who have come forward who were exposed, either as  
18 current residents or as former residents, either as  
19 property owners or not.

20 THE COURT: So you brought another class action  
21 for the residents.

22 MS. FACTOR: We have --

23 THE COURT: Is that right?

24 MS. FACTOR: No. No, your Honor.

25 THE COURT: Isn't that what I just heard you

Proceedings

1 say?

2 MS. FACTOR: No. No. We have this class  
3 action. We have this class action which seeks to cover  
4 everyone in the classes that I just --

5 THE COURT: In the whole town of Bethpage?

6 MS. FACTOR: Not if they're outside the plume,  
7 only if they were within the area affected by the plume  
8 at --

9 THE COURT: So what would be a resident within  
10 the plume?

11 MS. FACTOR: Well, the plume at different times  
12 extended to certain -- there was a scope, a geographic  
13 scope. It's not exact but it's estimated.

14 THE COURT: I'm either a property owner within  
15 the plume or I am store operator within the plume.

16 MS. FACTOR: Or a resident.

17 THE COURT: Well, what does a resident mean to  
18 you?

19 MS. FACTOR: Somebody who is currently  
20 living --

21 THE COURT: Who lived in one of those houses  
22 or --

23 MS. FACTOR: Yes.

24 THE COURT: -- or worked in one of those  
25 stores.

Proceedings

1 MS. FACTOR: No.

2 MR. TAMIGI: Your Honor?

3 MS. FACTOR: That -- a resident is somebody who  
4 lived there or lives there currently and doesn't  
5 necessarily have a deed to the property. They may be a  
6 renter or a family member.

7 THE COURT: Okay, but it's defined --

8 MS. FACTOR: Yes.

9 THE COURT: -- by some presence in a -- on a  
10 property within the plume, correct?

11 MS. FACTOR: That's correct, yes.

12 THE COURT: Some continued presence.

13 MS. FACTOR: No, they may have been -- they may  
14 have moved out of the area by now, yes.

15 THE COURT: Oh, please, come on. You know --

16 MS. FACTOR: It could be former residents  
17 because --

18 THE COURT: I have just tried -- I am not  
19 litigating the case with you. I am just trying -- I  
20 can't even imagine it's taking this long to identify who  
21 it is that you think should be in the class.

22 MS. FACTOR: Your Honor, it's --

23 THE COURT: I'm okay with if somebody lived  
24 there or used property there for some period of time such  
25 that they were -- you know, having stayed there more than